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No. 97-2063

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Petitioner,

v.

THE HONORABLE JOHN SPERONI, TAMMY SNIDER and MICHAEL AVERY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

BRIEF OF AMICUS CURIAE STATES OF NEVADA AND MASSACHUSETTS

AMICUS CURIAE BRIEF SUPPORTING PETITION FOR A WRIT OF CERTIORARI

(Filed in Support of State Farm Mutual Automobile Insurance Company)

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INTEREST OF THE AMICI

Nevada and Massachusetts object to the actions of the Illinois state court in applying Illinois law to class members' claims in Nevada, Massachusetts, and other states. The amici states support the position of Petitioner State Farm Mutual Automobile Insurance Company (State Farm) and urge this Court to grant certiorari to review the decision of the Illinois Supreme Court to deny State Farm's mandamus/prohibition/ supervision petition. Nevada, Massachusetts, and numerous other states have different laws than the state of Illinois with respect to the use of non original equipment manufacturer (OEM) parts, and indeed most states support the use of non-OEM parts in automobile repairs to keep the cost of those repairs down. To allow an Illinois state court to dictate what State Farm policyholders in other states will pay for automobile repairs is completely improper and offends the basic principle that each state must be free to determine its own policy and make its own laws with regard to the business of insurance.

SUMMARY OF ARGUMENT

The numerous cases of this Court and the federal circuit and district courts cited by State Farm in its petition for certiorari and the other amicus curiae demonstrate that the decision of the Illinois state court in applying Illinois' consumer fraud law to class members in other states with different laws is an incorrect decision and legally invalid. There is no need to extensively repeat the same cases and

argument that the counsel for the State Farm and the other amicus curiae have so ably cited and argued in their respective briefs. This brief will be limited to a discussion of state law and policy in order to demonstrate how much of a deleterious effect the decision of the Illinois state court will have on states with different laws on OEM parts than Illinois and the extent to which the actions of the Illinois state court contravene the carefully considered public policy of Nevada, Massachusetts, and other states as to the use of OEM parts.

The question for this Court is whether to grant certiorari to review a pretrial decision before the case has gone to trial. Nevada and Massachusetts strongly urge this Court to take this unusual step in this case because of the potentially far-reaching and extraterritorial effect of a verdict or settlement in the Illinois case. Because of the pressure to settle class action suits after verdict or under threat of one, it is unlikely that this Court will review the action of the Illinois state court unless it does so at this time. If State Farm settles, the burden on the State Farm policyholders in other states with different laws as to the use of OEM parts will become a reality. These policyholders in other states, including Nevada and Massachusetts that allow the use of non-OEM parts, may face increased premiums for insurance. Other insurance companies will have an unfair advantage over State Farm. States whose laws allow the use of non-OEM parts to keep insurance costs down will see the intent of those laws thwarted.

ARGUMENT

THE ACTIONS OF THE ILLINOIS STATE COURT IN APPLYING ILLINOIS LAW TO CLAIMS OF CLASS MEMBERS IN OTHER STATES IMPINGES ON THE RIGHTS OF OTHER STATES AND WILL UNFAIRLY BURDEN STATE FARM POLICY-HOLDERS IN THOSE STATES.

This Court has in several recent cases upheld the principle that each state has the right to determine and enforce its own public policies within its own borders but may not attempt to affect commerce or public policy in other states. *See*, *BMW v. Gore*, 517 U.S. 599 (1996); *Healy v. Beer Institute*, 491 U.S. 324, 335-336 (1989); *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 582-583 (1986). Nevada, Massachusetts, and numerous other states have their own carefully considered policies on the use of non-OEM parts in automobile repairs. Because State Farm is typically the largest or one of the largest insurers of automobiles in any given state, any class action verdict or settlement that forces State Farm to use only OEM parts in a given state, in contravention of that state's explicit policy to allow the use of such parts, can only have a detrimental effect on insurance premium rates in that state.

In Nevada, State Farm is the number one insurer of motor vehicles and insures 207,600 vehicles, 15.2 percent of the total number of vehicles insured. Nevada already

has the ninth highest automobile insurance premiums in the nation. A settlement in the Illinois case that forces State Farm to have to use only the more expensive OEM parts in Nevada, even though non-OEM parts are specifically authorized after disclosure under Nevada Administrative Code (NAC) section 686A.240, would unnecessarily drive up the cost of insurance premiums for the Nevada State Farm policyholders as a whole.

NAC section 686A.240 is a regulation that was added to the Nevada Administrative Code in 1992 by the Commissioner of Insurance and the Department of Motor Vehicles and Safety pursuant to the Nevada Administrative Procedure Act, Chapter 233B of the Nevada Revised Statutes (NRS). A Nevada state agency must provide public notice of a proposed regulation and a public hearing prior to a regulation being enacted. NRS 233B.061. This regulation must then be submitted to a legislative commission to determine whether it conforms to statutory authority and carries out legislative intent. NRS 233B.067.

In Massachusetts, the Code of Massachusetts Regulations title 211, § 133.04, states that when a part in a damaged vehicle must be replaced, except in specific limited circumstances, "a rebuilt, aftermarket [non-OEM] or used part of like kind and quality, at the lowest possible price, shall be used in the appraisal. . . ."

In the present case, if the decision of the Illinois Supreme Court in denying the petition for mandamus/ prohibition/supervision is not reviewed by this Court, the clear intent of NAC 686B.240 in permitting the use of non-OEM parts and the intent of MASS. REGS. CODE tit. 211, § 133.04 in requiring the use of non-OEM parts will be thwarted as to a large percentage of Nevada and Massachusetts motorists, in this instance the State Farm policyholders. This Court should not permit an Illinois state court, over which the residents of Nevada and Massachusetts have no authority, to determine what policyholders must pay for automobile body parts in the amici states.

Nevada and Massachusetts' policies and regulations concerning the use of non-OEM parts were carefully considered and enacted pursuant to the procedural laws of these states, with the intent to best serve their consumers. In enacting legislation or regulations dealing with non-OEM parts, each state must weigh the importance of reliable repair parts against the need to keep automobile insurance premiums low. The decision of the Illinois state court to force State Farm to treat every State Farm policyholder the same in 48 states does a great disservice to the independence of the several states to determine their own policies in this area.

The McCarran-Ferguson Act (15 U.S.C. 1011 et seq.) leaves the regulation of the business of insurance to the states rather than one state or to the federal Congress.

The Act rejects the concept of nationwide regulation of insurance practices.

CONCLUSION

For all the foregoing reasons, this Court should grant certiorari to review the decision of the Illinois Supreme Court to deny the petition for mandamus/ prohibition/supervision.

Respectfully submitted,

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